

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 2 BY AMENDING SECTION 24.0201; BY AMENDING DIVISION 3 BY AMENDING SECTION 24.0301; BY AMENDING DIVISION 4 BY AMENDING SECTION 24.0402; BY AMENDING DIVISION 5 BY AMENDING SECTION 24.0501; BY AMENDING DIVISION 8 BY AMENDING SECTION 24.0801, AND BY RENUMBERING SECTION 24.0803 AS SECTION 24.0802; BY AMENDING DIVISION 12 BY AMENDING SECTIONS 24.1201, 24.1202, 24.1203 AND 24.1204; BY AMENDING DIVISION 15 BY AMENDING SECTION 24.1507; ALL RELATING TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the City Council has the sole authority to establish the retirement benefits available under the San Diego City Employees' Retirement System ("System"); and

WHEREAS, the Board of Administration ("Retirement Board") for the System has the sole authority to manage the System, determine the rights to benefits under the System and invest the System's Trust Fund; and

WHEREAS, after meeting and conferring with the Police Officers' Association, Fire Fighters Local 145, Municipal Employees Association, and AFSCME, Local 127, the City Management Team has agreed to implement a number of revisions to the Retirement System; and

WHEREAS, the four labor organizations have reached an agreement with the City Management Team on the level of health benefits to be provided to Health Eligible Retirees; and

WHEREAS, the City Council has approved the agreements on retirement benefits and retiree health benefits; and

WHEREAS, the Municipal Code must now be amended to reflect the changes to retirement benefits and retiree health benefits approved by the City Council; and

WHEREAS, sections 24.0201 and 24.0301 must now be amended to provide that a Member serving as the duly elected president of a recognized employee labor organization may continue participating in the Retirement System consistent with the governing Memorandum of Understanding between the City and his or her employee organization; and

WHEREAS, section 24.0402 must now be amended to reflect the new retirement factors available to General Members, as well as the 90% cap on benefits and exceptions to the cap that accompany the new retirement factors; and

WHEREAS, section 24.0501 subsection (d) must now be amended to extend, from July 1, 2002 until July 1, 2005, the benefit for Members who suffer mental disabilities due to a violent attack in the workplace; and

WHEREAS, section 24.0501 must now be amended to clarify and describe in “plain English” the industrial disability retirement benefit; and

WHEREAS, it is the intent of the City and the Retirement Board to enter into a Memorandum of Understanding regarding the City's contributions to the Retirement Fund on behalf of Members employed by the City; and

WHEREAS, section 24.0801 must now be amended to state that the City’s contributions to the Retirement System will be based upon the terms of that Memorandum of Understanding; and

WHEREAS, section 24.0803 must now be renumbered to 24.0802, so that the sections will be sequentially numbered; and

WHEREAS, section 24.1202 must now be amended to reflect the agreed upon reimbursement levels for Health Eligible Retirees; and

WHEREAS, the sections contained in Chapter II, Article 4, Division 12 of the Municipal Code, must now be amended to clarify and describe the retiree health benefits in “plain English”; and

WHEREAS, section 24.1507 must now be amended to allow payment of the negotiated offsets to employee contributions from the Employee Contribution Rate Reserve; and

WHEREAS, section 24.1507 must now be amended to describe more clearly the terms of the Employee Contribution Rate Reserve; and

WHEREAS, the Retirement Board’s Assistant General Counsel prepared this ordinance to amend the Municipal Code to make the changes agreed to by the City’s Management Team and the four labor organizations and approved by the City Council; and

WHEREAS, the Retirement Board's Assistant General Counsel provided this ordinance to the City Attorney to review and approve; and

WHEREAS, any changes that affect the retirement benefits of the active Members of the Retirement System will not be effective unless approved by a majority vote of the Members;

WHEREAS, a vote of the Retirement System Members to approve the changes in this ordinance affecting Member benefits is expected to take place from November 2002 through December 2002;

NOW, THEREFORE, BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be amended by amending the title of the Division and by amending Section 24.0201 to read as follows:

Division 2: General Member Contributions

§24.0201 Normal Rate of Contribution

- (a) The normal rate of contribution for a General Member is based upon the Member's age at his or her birthday nearest to the date the Member joined the Retirement System.
- (b) A Member who is serving as the duly elected president of a recognized employee labor organization may continue to participate in the Retirement System, consistent with the governing Memorandum of Understanding between the City and the Member's employee organization.

Section 2. That Chapter II, Article 4, Division 3 of the San Diego Municipal Code be amended by amending section 24.0301 to read as follows:

Division 3: Safety Member Contributions

§24.0301 Normal Rate of Contributions

- (a) The normal rate of contribution for a Safety Member is based upon the Member's age at his or her birthday nearest to the date the Member joined the Retirement System.
- (b) A Member who is serving as the duly elected president of a recognized employee labor organization may continue to participate in the Retirement System, consistent with the governing Memorandum of Understanding between the City and the Member's employee organization.

Section 3. That Chapter II, Article 4, Division 4, of the San Diego Municipal Code be amended by amending section 24.0402 to read as follows:

§24.0402 General Member Retirement Allowance

- (a) The System will pay a General Member who retires for service a retirement allowance consisting of:
 - (1) a Service Retirement Annuity, and
 - (1) a Creditable Service Pension.
- (b) The Service Retirement Annuity is the Actuarial Equivalent of the Member's Accumulated Normal Contributions when the Member retires.
- (c) The Creditable Service Pension is the pension derived from the City's contributions, which is sufficient, when added to the Service Retirement Annuity, to equal the Unmodified Service Retirement Allowance.
- (d) The Unmodified Service Retirement Allowance is calculated by multiplying the Member's years of Creditable Service by the retirement factor for his or her age at retirement, as shown in the table for section 24.0402. The resulting number is then multiplied by the Member's Final Compensation. The System prorates the factors from the table for section 24.0402, to reflect quarterly increments in the Member's retirement age.
- (e) Effective July 1, 2002, a General Member who joined the Retirement System before July 1, 2002 may choose, at retirement, to have his or her Unmodified Service Retirement Allowance calculated using:
 - (1) the unmodified factors in effect on July 1, 2000 ("Corbett Factors"), as shown in the table for section 24.0402, with no increase to the General Member's Final Compensation,
 - (2) the unmodified factors in effect on June 30, 2000 ("Old Factors"), as shown in the table for section 24.0402, with a 10% increase to the General

Member's Final Compensation , or

(3) the unmodified factors in effect on July 1, 2002 ("New Factors"), as shown in the table for section 24.0402, with no increase to the General Member's Final Compensation.

(f) The Retirement System will calculate the Unmodified Service Retirement Allowances of all General Members who joined the Retirement System on or after July 1, 2002 using the New Factors, with no increase to the General Member's Final Compensation.

(g) A General Member's Unmodified Service Retirement Allowance may not exceed 90% of his or her Final Compensation if the Member chooses, or is required because of the date the Member joined the System, to have his or her Unmodified Service Retirement Allowance calculated using the New Factors, except:

(1) Any Member whose Unmodified Service Retirement Allowance is 90% or more of his or her Final Compensation on or before December 31, 2002, using the New Factors, including any purchase of Creditable Service under this subsection, may continue to accrue or purchase Creditable Service above the 90% limit through December 31, 2002. Any purchase of Creditable Service under this subsection must be applied for by December 31, 2002 and completed before July 1, 2003. On January 1, 2003, the Member's retirement factor and Creditable Service will be frozen, including any Creditable Service the Member purchases under this subsection before July 1, 2003. The Member's Final Compensation will not be frozen. The Member must make an election on or before January 1,

2003, or the date the member completed his or her purchase of Creditable Service under this subsection, as follows:

- (A) If the Member is eligible to retire, he or she may:
 - (i) continue working and contributing to the Retirement System,
 - (ii) enter DROP, or
 - (iii) retire.
- (B) If the Member is not eligible to retire, he or she may:
 - (i) continue working and contributing to the Retirement System, or
 - (ii) enter the Cap Program. If the Member enters the Cap Program, the Member will stop contributing to the Retirement System, and will instead contribute 3.05% of his or her Base Compensation, biweekly at the end of each pay period, to a Cap Program account established for the Member. The City will match these contributions. Interest will be credited to the Member's Cap Program account as determined by the Board. The Member may continue participating in the Cap Program until he or she first becomes eligible to retire, at which time the Member must either enter DROP or retire.
 - (iii) A Cap Program participant who becomes disabled while participating in the Cap Program is eligible to apply for disability retirement benefits. If the Cap Program

participant's application for disability retirement is ultimately approved by the Board, his or her disability retirement benefit will be calculated using the participant's age, Creditable Service and Final Compensation as of the day he or she began participating in the Cap Program.

- (2) A Member may exceed the 90% limit using the New Factors, and may continue accruing retirement benefits until he or she is eligible to retire for service, if the Member:
 - (A) applied to purchase Creditable Service on or before June 5, 2002, and thereafter completed the purchase,
 - (B) was under 24 years of age when hired by the City, and
 - (C) will exceed the 90% limit because of the Creditable Service he or she applied to purchase on or before June 5, 2002. The Member may not exceed the 90% limit using Creditable Service that he or she applied to purchase after June 5, 2002.
- (3) When a Member who meets the requirements of section 24.0402 (g)(2) first becomes eligible to retire from service, his or her retirement factor and years of Creditable Service will be capped at that time, even if the Member continues to work and contribute to the Retirement System. The Member's Final Compensation will not be capped.
- (h) If the Member chooses to have his or her Unmodified Service Retirement Allowance calculated using either the Old Factors or the Corbett Factors, the Member's Unmodified Service Retirement Allowance will not be capped. Also, the System will refund to the Member, upon retirement, any excess contributions

the Member made to fund the New Factors plus interest as determined by the Board.

- (i) The System uses the factors in the table for section 24.0402 to calculate the Unmodified Service Retirement Allowance. The Unmodified Service Retirement Allowance is reduced if the Member selects any of the optional settlements described in Division 6.

Table for Section 24.0402

GENERAL MEMBER RETIREMENT CALCULATION FACTORS

Retirement Age	Unmodified Factors Effective 6/30/00 (Old Factors)	Unmodified Factors Effective 7/1/00 (Corbett Factors)	Unmodified Factors Effective 7/1/02 (New Factors)
55	2.00%	2.25%	2.50%
56	2.00%	2.25%	2.50%
57	2.00%	2.25%	2.50%
58	2.00%	2.25%	2.50%
59	2.08%	2.25%	2.50%
60	2.16%	2.30%	2.55%
61	2.24%	2.35%	2.60%
62	2.31%	2.40%	2.65%
63	2.39%	2.45%	2.70%
64	2.47%	2.50%	2.75%
65 and older	2.55%	2.55%	2.80%

Section 4. That Chapter II, Article 4, Division 5, of the San Diego Municipal Code be amended by amending section 24.0501 to read as follows:

§24.0501 Industrial Disability—Safety and General Members

- (a) Any Member who joined the Retirement System on or before September 3, 1982, is eligible for an industrial disability retirement allowance, regardless of his or her

age or Creditable Service, if:

- (1) the Member is permanently incapacitated from the performance of duty,
 - (2) the Member's incapacity is the result of injury or disease arising out of or in the course of his or her City employment, and
 - (3) the Member's incapacity renders his or her retirement necessary.
- (b) Any Member who enrolled in the Retirement System after September 3, 1982 will receive an industrial disability retirement allowance, regardless of his or her age or Creditable Service, if:
- (1) the Member is permanently incapacitated from the performance of duty,
 - (2) the Member's incapacity is the result of injury or disease arising out of or in the course of his or her employment,
 - (3) the Member's incapacity renders his or her retirement necessary, and
 - (4) the Member's incapacity did not arise from:
 - (A) a preexisting medical condition, or
 - (B) a nervous or mental disorder.
- (c) For purposes of section 24.0501, a preexisting medical condition is a condition that occurred or existed before the Member joined the Retirement System. Any medical condition that occurs during a mandatory waiting period before the Member is eligible to join the Retirement System is not a preexisting condition.
- (d) Despite section 24.0501(b)(4), a Member who is employed by the City as of July 1, 2000 is eligible for an industrial disability retirement if all of the following conditions are met:
- (1) the Member is a victim of a violent attack involving the use of deadly force,
 - (2) the attack occurs on or after July 1, 2000,

- (3) the attack occurs before July 1, 2003, if the Member is in the Police Officers' Association bargaining unit, or before July 1, 2005, for all other Members,
- (4) the attack occurs while the Member is performing his or her duties as a City employee,
- (5) the attack causes the Member great bodily harm,
- (6) the attack causes the Member to suffer a nervous or mental disorder, and
- (7) the Board determines, based upon the medical evidence, that the Member has become psychologically or mentally incapable of performing his or her normal and customary duties, as a result of the attack.

Section 5. That Chapter II, Article 4, Division 8 of the San Diego Municipal Code be amended by amending section 24.0801, and by renumbering section 24.0803 to read as follows:

§24.0801 City's Contribution

The City will contribute to the Retirement Fund, on behalf of Members employed by the City, the amounts agreed to in the governing Memorandum of Understanding between the City and the Board. The Actuary separately determines the City's contributions for General Members, Safety Members and Elected Officers. All deficiencies that occur due to the adoption of any Retirement Ordinances must be amortized over a period of thirty years or less. The portion of the contribution that the City designates for the 401(h) Fund or the Health Trust, to be used for retiree health benefits under Division 12, is not a deficiency within the meaning of this section.

Section 6. That Chapter II, Article 4, Division 12, of the San Diego Municipal Code be amended by amending the title, and by amending sections 24.1201, 24.1202, 24.1203 and 24.1204 to read as follows:

Division 12: Retiree Health Benefits

§24.1201 Eligible Retirees

(a) Effective August 1, 1997, two separate retiree health benefits are offered: one to Health Eligible Retirees and one to Non Health Eligible Retirees. A Health Eligible Retiree is any General Member, Safety Member or Elected Officer who: (1) was on the active City payroll on or after October 5, 1980, (2) retired on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System. A Non Health Eligible Retiree is any retiree who: (1) retired or terminated City employment as a vested Member before October 6, 1980 and (2) is eligible for and is receiving a retirement allowance from the Retirement System.

(b) Health Eligible Retirees who retired on or after July 1, 1992 under the "sliding scale" benefit in existence at the time of their retirement shall have their Retiree Health Benefit prospectively adjusted on August 1, 1997, to be the same as that for Health Eligible Retirees who retire on or after August 1, 1997.

(c) Effective December 31, 1998, a third retiree health benefit is offered to the spouses or dependents under age 21 of a City employee Member killed in the line of duty by: (1) external violence or physical force or (2) as a result of an accident or injury caused by external violence or physical force. For a Safety Member, this benefit will be paid if death benefits are awarded to the Member's spouse or dependents by a final decision under the federal Public Safety Officers Benefit Act. Surviving spouses and dependents eligible for benefits under section 24.1201(c) will receive

retiree health benefits. Their health insurance premiums will be paid or reimbursed up to the amount of the annual Flexible Benefits Allotment as defined in the Annual Salary Ordinance adopted by the City Council. No benefits will be provided under this subsection if : (1) the death or injury resulting in death was caused by the Member's intentional misconduct or intent to cause his or her own death or injury; (2) the Member was voluntarily intoxicated at the time of his or her death; or (3) the Member was performing his or her duties in a grossly negligent manner at the time of death or injury. No benefit under this subsection will be paid to any individual whose actions were a substantial contributing factor to the Member's death or catastrophic injury.

§24.1202 Retiree Health Benefits Defined

- (a)-(b) No change.
- (c) For fiscal year 2003, the Health Eligible Retiree will be paid or reimbursed for health insurance premiums up to the cost of the Medicare-eligible or Non-Medicare-eligible retiree premium for the City-sponsored Preferred Provider Organization (PPO) plan available to Health Eligible Retirees, regardless of which health insurance plan the Health Eligible Retiree selects.
- (d) After fiscal year 2003, the maximum payment or reimbursement level for Health Eligible Retirees will be adjusted annually based upon the projected increase for National Health Expenditures by the Centers for Medicare and Medicaid Services, Office of the Actuary, for the full-year period ending January 1 before each plan year. No adjustment may exceed 10% for any plan year. The City will notify the

Retirement System in writing of the amount of the adjustment at least 30 days before the beginning of each plan year.

(e)-(g) No change.

§24.1203 401(h) Fund Established

- (a) All retiree health benefit payments by the 401(h) Fund will comply with all applicable federal laws, including section 401(h) of the Internal Revenue Code (“Code”). If there is a conflict between this Division and section 401(h) of the Code or regulations issued under that section, the Code and regulations govern.
- (b) 401(h) Fund – Compliance with Applicable Provisions of the Code
 - (1) All health benefits under this Division will be paid solely from the 401(h) Fund until the 401(h) Fund assets are exhausted.
 - (2) No health benefits provided under the 401(h) Fund may discriminate in favor of highly compensated employees.
 - (3) The 401(h) Fund is a separate account solely for providing retiree health benefits. It is established and maintained by the Board to reflect the amounts the City contributes to pay retiree health benefits. The 401(h) Fund exists for record-keeping purposes only. Amounts credited to the 401(h) Fund may be invested with other Retirement System funds set aside for retirement purposes, without identifying which investments are allocated to each account. But, earnings on each account must be allocated in a reasonable manner.
 - (4) The City contributes to the 401(h) Fund solely to pay health insurance premiums under this Division. Contributions will be reasonable, ascertainable, necessary and appropriate. Contributions will not exceed the

amounts that would violate the Code requirement that health benefits be subordinate to the retirement benefits.

- (5) When the City makes a contribution to the 401(h) Fund, it must designate in writing to the Board the portion of the contribution to be allocated to the 401(h) Fund for health benefits.
- (6) No part of the 401(h) Fund may be used for any purpose other than paying health benefits under this Division. But, 401(h) Fund assets may be used to pay for necessary and appropriate administrative expenses related to retiree health benefits.
- (7) Any amounts contributed to the 401(h) Fund that remain in the 401(h) Fund after all liabilities for retiree health benefits are satisfied, including benefits payable to existing Members in the future, will be returned to the City. The City will provide benefits to Health Eligible and Non Health Eligible Retirees equal to the returned amount.
- (8) Section 24.1203 does not require separate accounts for key employees because no member of the Retirement System is a key employee under the Code.
- (9) Assets attributable to any forfeitures of benefits payable by the 401(h) Fund will be used to reduce the City's contributions for retiree health benefits.
- (c) The Board may adopt rules and regulations as necessary or appropriate to carry out the requirements of this Division.

§24.1204 Funding of Retiree Health Benefits

The retiree health benefits described in this Division will be paid from the following sources of funds in descending order of availability:

- (a) the 401(h) Fund, until exhausted, and
- (b) the City, directly, from any source available to it.

Section 7. That Chapter II, Article 4, Division 15 of the San Diego Municipal Code be amended by amending section 24.1507 to read as follows:

§24.1507 Employee Contribution Rate Reserve

- (a) The Retirement Board created a reserve under section 24.1502(a)(3) to pay a portion of employee contributions (the "Employee Contribution Rate Reserve").
- (b) The Employee Contribution Rate Reserve was created with \$35,000,000 from Undistributed Earnings for the fiscal year that ended June 30, 1997.
- (c) The Employee Contribution Rate Reserve will be credited with interest annually, if sufficient funds are available, in accordance with section 24.1502(a)(7).
- (d) The monies in the Employee Contribution Rate Reserve are not counted as part of System assets in the annual actuarial valuation.
- (e) The Auditor and Comptroller will certify annually the amount of the anticipated City Payroll for the next fiscal year. Based upon this certification, at the beginning of each fiscal year, the Auditor will transfer an amount equal to .65% of the total City payroll from the Employee Contribution Rate Reserve to the Employer Contributions Reserve.
- (f) On a biweekly basis, based upon actual biweekly payroll, the Auditor will transfer from the Employee Contribution Rate Reserve to the Employer Contributions Reserve:
 - (1) an amount equal to 1.7% of the City payroll for Safety Members, starting at the beginning of the first full pay period after July 1, 2002,

- (2) an amount equal to 1.6% of the City payroll for General Members, starting at the beginning of the first full pay period after July 1, 2003, and
- (3) an amount equal to 1% of the City payroll for fire department and lifeguard employees who are Safety Members, starting at the beginning of the first full pay period after July 1, 2003.
- (g) The amounts listed in sections 24.1507(e) and 24.1507(f) are cumulative.
- (h) All transfers under section 24.1507 will be accounted for separately.
- (i) Transfers under section 24.1507 will continue as long as there are sufficient funds remaining in the reserve.

Section 8. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Section 10. Any aspect of this ordinance affecting the retirement benefits shall take effect upon approval by the Membership of the Retirement System pursuant to Charter Section 143.1, and no earlier than the thirtieth day from and after its passage by the City Council.

APPROVED: CASEY GWINN, City Attorney

By _____
Michael Rivo
Deputy City Attorney
MR:ELH:smf:ms:as
10/09/02
10/17/02 Cor. Copy
11/04/02 2nd Cor. Copy
Or.Dept: Retire. [LEC:RSP]
O-2003-67